UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO. 5:12-CV-714-D

LOUSHONDA MYERS, ET AL.,)
Plaintiffs)
)
VS.)
)
THE STATE OF NORTH CAROLINA, ET AL.,)
Defendants)
	_)

MOTION TO STRIKE AND DISMISS ON BEHALF OF JOHNSTON COUNTY, JOHNSTON COUNTY DEPARTMENT OF SOCIAL SERVICES, "CARMEN CARRAE," KIMBERLY FRANKLIN, AND "UNKNOWN OFFICERS AND AGENTS OF THE JOHNSTON COUNTY DEPARTMENT OF SOCIAL SERVICES"

COME NOW the purported Defendants Johnston County, Johnston County Department of Social Services, an individual identified as "Carmen Carrae," Kimberly Franklin, and other "unknown officers and agents of the Johnston County Department of Social Services," by and through their undersigned counsel, and move the Court to strike certain allegations and dismiss this action under Rules 12(b)(1), (2), (4), (5), and (6), Federal Rules of Civil Procedure, for lack of subject matter jurisdiction, lack of personal jurisdiction, insufficient process, insufficient service of process, and failure to state a claim upon which relief may be granted; and further to dismiss this action as to the plaintiff minor children pursuant to Rules 11 and 17. In support of this Motion, these Defendants show unto the Court as follows:

- 1. As to these Defendants, the Complaint fails to state a claim upon which relief may be granted.
- 2. Plaintiffs failed to serve these Defendants as required by Rule 4, failed to properly identify these Defendants in the caption of the Complaint, and failed to direct or address the

summonses properly to these Defendants as required by Rule 4. As a result, the Court lacks personal jurisdiction over these Defendants. This action as to these Defendants should be dismissed pursuant to Rules 12(b)(2), (4), and (5).

- 3. The defendant identified as "Carmen Carrae" does not exist, or at least is not and has never been an employee of the Johnston County Department of Social Services. Any reference to this person is immaterial and impertinent and should be stricken pursuant to Rule 12(f).
- 4. The Plaintiff's minor children are not properly joined as real parties in interest, are not properly represented, and have failed to sign the Complaint as required by Rule 11. The claims on their behalf should be stricken and dismissed pursuant to Rules 11, 12(f), and 17.

WHEREFORE, these Defendants move the Court for its Order striking the claims of the minor children and dismissing this action in its entirety against these Defendants with prejudice, and allowing such other and further relief as to the Court seems just and proper.

This 25th day of January, 2013.

/s/ David F. Mills

David F. Mills

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Johnston County Department of Social Services,
"Carmen Carrae," Kimberly Franklin, and the
unnamed "unknown officers and agents of the
Johnston County Department of Social Services"

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed with the Clerk of Court for the United States District Court for the Eastern District of North Carolina using the CM/ECF system, which will send notification of such filing to all parties in this action registered on the system. In addition, a copy has been sent by United States mail to the pro se Plaintiffs addressed to Plaintiff Myers's physical address of record as well as to the parties who have not yet filed their appearance in this matter:

Loushonda Myers 27 Wateree Trail Georgetown, SC 29440 Pro Se Plaintiff and mother of minor children, C.M., A.M. & M.M.

North Carolina Department of Health and Human Services, 9001 Mail Service Center Raleigh, NC 27699-9001 *Defendants*

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Capt. A.C. Fish; Cpt. D. Daughtry; Lt. Stewart; Det. Don Pate;
Det. J. Creech; Det. C.K. Allen; Det. J. Canady; Det. A. Case;
Deputy Gillis; unknown Officers/Agents of the Office of the
Johnston County Sheriff

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Magistrate/Judge Bethany Hale; Magistrate/Judge Walter Stanley;
Susan Doyle, Adren Harris, North Carolina Court System, Office
Of Indigent Defense Services, Johnston County Public Defender's
Office and Johnston County District Attorney's Office

This 25th day of January, 2013.

/s/ David F. Mills

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